

# SENATE BILL 551

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CF HB 1130

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By: **Senators Kelley, Benson, Jones–Rodwell, Madaleno, Manno, Montgomery, Pugh, and Raskin**

Introduced and read first time: February 4, 2011

Assigned to: Finance

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Maryland Wage and Hour Law – Prohibited Acts of Employers – Adverse**  
3 **Action**

4 FOR the purpose of prohibiting an employer from taking adverse action against an  
5 employee who makes a complaint, brings an action, or testifies in an action  
6 under the Maryland Wage and Hour Law; specifying that the adverse action  
7 prohibited includes certain retaliatory actions; prohibiting the conviction of an  
8 employer without certain evidence; defining a certain term; and generally  
9 relating to prohibited acts of employers under the Maryland Wage and Hour  
10 Law.

11 BY repealing and reenacting, without amendments,  
12 Article – Labor and Employment  
13 Section 3–401  
14 Annotated Code of Maryland  
15 (2008 Replacement Volume and 2010 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – Labor and Employment  
18 Section 3–428  
19 Annotated Code of Maryland  
20 (2008 Replacement Volume and 2010 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Labor and Employment**

4 3–401.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) “Employer” includes a person who acts directly or indirectly in the  
7 interest of another employer with an employee.

8 (c) “Federal Act” means the federal Fair Labor Standards Act of 1938.

9 (d) “Wage” means all compensation that is due to an employee for  
10 employment.

11 3–428.

12 (a) **IN THIS SECTION, “COMPLAINT” INCLUDES A WRITTEN OR ORAL**  
13 **COMPLAINT, CLAIM, OR ASSERTION OF RIGHT BY AN EMPLOYEE, REGARDING**  
14 **THE PAYMENT OF WAGES UNDER THIS SUBTITLE, THAT IS MADE TO:**

15 **(1) THE EMPLOYER OR A SUPERVISOR, MANAGER, OR FOREMAN**  
16 **EMPLOYED BY THE EMPLOYER WHETHER IT IS MADE THROUGH THE**  
17 **EMPLOYER’S INTERNAL GRIEVANCE PROCESS OR OTHERWISE; OR**

18 **~~(2) THE EMPLOYEE’S UNION REPRESENTATIVE;~~**

19 **~~(3) A REPRESENTATIVE OF A LABOR UNION OR LABOR~~**  
20 **~~ORGANIZATION WHO IS CONSULTED BY THE EMPLOYEE WITH RESPECT TO A~~**  
21 **~~COMPLAINT IF THE LABOR UNION OR LABOR ORGANIZATION IS IN THE PROCESS~~**  
22 **~~OF ORGANIZING AT THE EMPLOYEE’S WORKSITE;~~**

23 **~~(4) AN ATTORNEY WHO IS CONSULTED OR RETAINED BY THE~~**  
24 **~~EMPLOYEE WITH RESPECT TO A COMPLAINT; OR~~**

25 **~~(5)~~ (2) THE COMMISSIONER OR AN AUTHORIZED**  
26 **REPRESENTATIVE OF THE COMMISSIONER.**

27 **(B) (1)** An employer may not:

28 **[(1)] (I)** pay or agree to pay less than the wage required under this  
29 subtitle;

1            **[(2)] (II)** hinder or delay the Commissioner or an authorized  
2 representative of the Commissioner in the enforcement of this subtitle;

3            **[(3)] (III)** **[discharge] TAKE ADVERSE ACTION AGAINST** an employee  
4 because the employee:

5                    **[(i)] 1.** makes [to the employer, the Commissioner, or an  
6 authorized representative of the Commissioner] a complaint that the employee has not  
7 been paid in accordance with this subtitle;

8                    **[(ii)] 2.** brings an action under this subtitle or a proceeding  
9 that relates to the subject of this subtitle; or

10                   **[(iii)] 3.** has testified in an action under this subtitle or a  
11 proceeding related to the subject of this subtitle; or

12            **[(4)] (IV)** violate any other provision of this subtitle.

13                    **(2) ADVERSE ACTION PROHIBITED UNDER PARAGRAPH (1) OF**  
14 **THIS SUBSECTION INCLUDES:**

15                    **(I) DISCHARGE;**

16                    **(II) DEMOTION;**

17                    **(III) THREATENING THE EMPLOYEE WITH DISCHARGE OR**  
18 **DEMOTION; AND**

19                    **(IV) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A**  
20 **CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD**  
21 **DISSUADE A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING**  
22 **AN ACTION, OR TESTIFYING IN AN ACTION UNDER THIS SUBTITLE.**

23            **[(b)] (C)** An employee may not:

24                    (1) make a groundless or malicious complaint to the Commissioner or  
25 an authorized representative of the Commissioner;

26                    (2) in bad faith, bring an action under this subtitle or a proceeding  
27 related to the subject of this subtitle; or

28                    (3) in bad faith, testify in an action under this subtitle or a proceeding  
29 related to the subject of this subtitle.

1            **[(c)] (D)**     A person who violates any provision of this section is guilty of a  
2 misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

3            **(E)    AN EMPLOYER MAY NOT BE CONVICTED UNDER THIS SECTION**  
4 **UNLESS THE EVIDENCE DEMONSTRATES THAT THE EMPLOYER HAD**  
5 **KNOWLEDGE OF THE RELEVANT COMPLAINT, TESTIMONY, OR ACTION FOR**  
6 **WHICH THE PROSECUTION FOR RETALIATION IS SOUGHT.**

7            SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2011.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.